

# NEW APPLICATION

ORIGINAL



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BEFORE THE ARIZONA CORPORATION COMMISSION

## COMMISSIONERS

DOCKETED

TOM FORESE – Chairman  
BOB BURNS  
ANDY TOBIN  
BOYD DUNN  
JUSTIN OLSON

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DOCKETED BY

IN THE MATTER OF THE COMMISSION  
UTILITIES DIVISION STAFF'S COMPLAINT  
AGAINST JOHNSON UTILITIES, L.L.C. FOR  
VIOLATIONS OF THE COMMISSION'S  
AFFILIATED INTEREST RULES; AND

DOCKET NO.

WS-02987A-18-0343

COMPLAINT

FOR THE ADJUDICATION OF HUNT MGT.,  
L.L.C. AND ULTRA MANAGEMENT, L.L.C.  
AS AFFILIATES OF JOHNSON UTILITIES,  
L.L.C.

Staff of the Utilities Division ("Staff") of the Arizona Corporation Commission ("Commission"), for its Complaint against Johnson Utilities, L.L.C. ("Johnson Utilities" or the "Company"), an Arizona corporation, alleges:

### I. JURISDICTION

1. The Commission has jurisdiction to hear complaints against public service corporations pursuant to A.R.S. § 40-246. The Commission has jurisdiction to supervise and regulate public service corporations pursuant to Article XV of the Arizona Constitution and Title 40 of the Arizona Revised Statutes.

### II. JOHNSON UTILITIES

2. Johnson Utilities is an Arizona public service corporation that provides water and wastewater utility services in portions of Pinal County, Arizona.

3. The only member of Johnson Utilities is the George H. Johnson Revocable Trust.

4. Johnson Utilities is classified as a Class "A" utility for both its water and wastewater divisions.

5. Johnson Utilities provides water and wastewater services pursuant to Certificates of Convenience and Necessity ("CC&Ns") originally granted by the Commission in Decision 60223 (May 27, 1997) and extended in subsequent decisions.

1  
2 6. Johnson Utilities operates two water systems, Johnson Ranch and Anthem at Merrill  
3 Ranch, and four wastewater systems, Pecan, San Tan, Section 11, and Anthem. As of June 30, 2017,  
4 Johnson Utilities provided water service to approximately 25,615 service connections and served  
5 approximately 35,320 sewer laterals.

6 7. The Company services customers located throughout Pinal County, including  
7 customers located in Florence, Queen Creek, and San Tan Valley. The Company also services  
8 customers located in Maricopa County.

9 8. As a condition of its CC&Ns, Johnson Utilities is required to comply with Arizona  
10 law, Commission Orders, and Commission Rules and Regulations.

11 9. In Commission Decision No. 76785, the Commission ordered the appointment of an  
12 Interim Manager for Johnson Utilities.

### 13 **III. FACTUAL BACKGROUND**

#### 14 a. **The Commission's Affiliated Interest Rules**

15 10. In 1992, the Affiliated Interest Rules were codified in the Arizona Administrative  
16 Code ("A.A.C."), R14-2-801 to R14-2-806.

17 11. The Commission Decision in which the Affiliated Interest Rules were adopted,  
18 Decision No. 56844 (March 14, 1990), provided that the Commission's purpose in adopting the  
19 Affiliated Interests Rules was to protect ratepayers from paying rates that included costs associated  
20 with holding company structure, financially struggling affiliates, and sweetheart deals with affiliates  
21 intended to extract capital from the utility to subsidize non-utility operations.

22 12. A.A.C. R14-2-801(1) defines "Affiliate" as follows: "'Affiliate,' with respect to the  
23 public utility, shall mean **any other entity** directly or indirectly controlling or controlled by, **or**  
24 **under direct or indirect common control with, the public utility.** For purposes of this definition,  
25 the term 'control' (including the correlative meanings of the terms 'controlled by' and 'under  
26 common control with'), as used with respect to any entity, shall mean **the power to direct the**  
27 **management policies of such entity, whether through ownership of voting securities, or by**  
28 **contract, or otherwise.'**"

1  
2 13. A.A.C. R14-2-803(A) provides that "These [Affiliated Interest Rules] are applicable to  
3 all Class A investor-owned utilities under the jurisdiction of the Commission and are applicable to all  
4 transactions entered into after the effective date of these rules."

5 14. A.A.C. R14-2-804 provides:

- 6 a. At subsection (A): a utility shall not transact business with an affiliate unless that  
7 affiliate agrees to provide the Commission with access to its books and records to  
8 the degree required to fully audit, examine and investigate transactions between  
9 the utility and the affiliate. The Commission may require productions of books,  
10 records, accounts, memoranda and documents related to those transactions.  
11 b. At subsection (B): the utility must obtain prior approval of the Commission before  
12 obtaining a financial interest in an unregulated affiliate.  
13 c. At subsection (C): the Commission will review transactions described in A.A.C.  
14 R-14-2-804(B) to determine if the transactions would impair the ability of the  
15 public utility to provide safe, reasonable, and adequate service (among other  
16 things).  
17 d. At subsection (D): that every transaction in violation of subsections (A) and (B) is  
18 void.  
19 e. At subsection (E): the utility is required to maintain a system of accounts that  
20 includes the necessary accounting records needed to record and compile  
21 transactions with each affiliate.

22 15. A.A.C. R14-2-805 requires utilities to report specified information about affiliates  
23 with whom transactions occurred on an annual basis, which assists the Commission in requesting  
24 additional information and/or holding a hearing on whether the utility's business activities would  
25 impair the financial status of the utility or impair its ability to provide safe, reasonable and adequate  
26 service.

27 b. **Johnson, Ultra and Hunt**  
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2 16. Summarizing the facts detailed at length below, Johnson Utilities, Hunt Mgt., L.L.C.  
3 (“Hunt”) and Ultra Management, L.L.C. (“Ultra”) are under the common ownership and control of  
4 George Johnson. Johnson Utilities, Hunt and Ultra are “affiliates” as defined under the  
5 Commission’s Affiliated Interest Rules. Johnson Utilities’ proffered “alternative interpretations” of  
6 the Affiliated Interest Rules are without merit.

7 17. Because of the Commission’s investigation of Johnson Utilities in Commission  
8 Docket No. WS-02987A-18-0050 (the “OSC Proceeding”), the Commission learned that Johnson’s  
9 corporate structure is different from what Johnson has represented and reported to the Commission.

10 18. Until the Commission appointed an interim manager, Johnson Utilities’ only  
11 employee was its manager, Gary Drummond.

12 19. Aside from Mr. Drummond, all the individuals who regularly perform work in support  
13 of Johnson Utilities’ day-to-day operations are employed by Hunt, which is an Arizona limited  
14 liability company formed on November 13, 2009. Hunt is owned by the CJ Trust (Chris and Margaret  
15 Johnson as trustees) and Barjo LLC (owned and controlled by Barbara Johnson).

16 20. Chris, Barbara, and Margaret Johnson are George Johnson’s children.

17 21. Brad Cole has been the COO of Hunt since March 2015. Until the Commission’s  
18 appointment of an Interim Manager, Mr. Cole was responsible for overseeing the Hunt employees  
19 assigned to work for the Company, providing guidance and direction to field staff on operational and  
20 maintenance matters for both of Johnson Utilities’ divisions, overseeing and approving Johnson  
21 Utilities’ expenditures, overseeing capital improvements, and representing Johnson Utilities at  
22 industry function and in regulatory matters before the Commission.

23 22. Brad Cole is the fiancé of George Johnson’s daughter, Margaret Johnson.

24 23. Johnson Utilities does not contract directly with Hunt for the provision of workers but  
25 instead contracts with Ultra, which leases Hunt’s employees to provide services to Johnson Utilities.

26 24. Ultra is a foreign limited liability company formed in Delaware in December 2010.  
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2 25. Johnson Utilities originally entered into a contract with Ultra in March 2013 and  
3 subsequently entered into the amended 2014 contract on January 1, 2014. The 2014 Ultra contract  
4 was signed by George Johnson for Johnson Utilities and Barbara Johnson for Ultra.

5 26. The 2014 Ultra contract requires Ultra to be responsible for a number of enumerated  
6 "administrative functions" for Johnson Utilities.

7 27. The OSC Proceeding revealed, however, that Ultra actually performs no services or  
8 functions for Johnson Utilities, and Hunt actually performs all the administrative functions for which  
9 Ultra is responsible on paper.

10 28. Under the 2014 Ultra contract, which is of unlimited duration and can only be  
11 terminated at will by Ultra, Ultra is entitled to receive from Johnson Utilities a monthly fee of \$22.10  
12 per water utility customer and a fee of \$19.90 per wastewater utility customer.

13 29. In Johnson Utilities' currently pending rate case, Johnson Utilities paid Ultra  
14 approximately \$16 million in the test year.

15 30. During the test year of pending rate case docket Ultra paid Hunt approximately \$6 to  
16 \$7 million for Hunt's services.

17 31. Of the \$16 million received from Johnson Utilities, Ultra retained \$8.5 to \$9.5 million.

18 32. Based on testimony provided during the OSC Hearing, and based on testimony in the  
19 subsequent contempt proceeding in the same docket, the Commission believed Ultra was owned and  
20 controlled solely by George's daughter, Barbara, and his son, Chris Johnson.

21 33. When questioned about George Johnson's ownership and control of Ultra, Gary  
22 Drummond represented that Ultra has separate ownership from Johnson Utilities.

23 34. Further, on July 23, 2018, Ultra filed a lawsuit against the Commission (which it  
24 subsequently voluntarily dismissed) that made the following representations:

25 a. Ultra's sole member is the Pinetop Trust II;

26 b. Ultra shares no members with Johnson Utilities **and the Trust that is Ultra's sole**  
27 **member has no common Trustor**, Trustee, or Beneficiaries or Beneficiaries of  
28 the Trust that is the sole member of Johnson Utilities, LLC.

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2 i. [Ultra Complaint attached hereto as Exhibit "A"]

3 35. The Ultra Complaint did not attach a copy of the Pinetop Trust II to support the above  
4 allegation.

5 c. **The Pinetop Trust II**

6 36. During the course of the contempt proceeding in Docket No. 18-0050, Administrative  
7 Law Judge Sarah Harpring requested counsel for Johnson Utilities to file a copy of the Pinetop Trust  
8 II.

9 37. On September 4, 2018, counsel for Johnson Utilities filed copies of its late filed  
10 exhibits, and avowed the following: "Johnson Utilities requested a copy of the trust agreement but  
11 was unable to obtain a copy of the agreement."

12 38. On September 19, 2018, Commission Staff obtained a copy of a pleading filed in a  
13 case pending in Maricopa County Superior Court, Case No. CV2013-001665, *Kunasek v. Johnson, et*  
14 *al.*, filed on June 14, 2018. The pleading attached a copy of the Pinetop Trust II. [Pinetop Trust II  
15 attached as Exhibit "B"]

16 39. The Pinetop Trust II provides that George Johnson (together with his wife, Jana  
17 Johnson) is the "Settlor," (the Trustor) of the Pinetop Trust II.

18 40. The Pinetop Trust II is dated January 1, 2015.

19 41. The Trust Corpus of the Pinetop Trust II is listed as being comprised of one thing,  
20 listed at Exhibit A: "One Hundred percent (100%) Membership Interest in Ultra Management L.L.C.,  
21 a Delaware limited liability company.

22 42. The Pinetop Trust II, at Section V, provides: "The Settlers hereby reserve the  
23 following administrative powers, which may be either Settlor at any time in a non-fiduciary capacity:  
24 1. To borrow the trust corpus, directly or indirectly, without adequate security; and 2. To reacquire  
25 the trust corpus by substituting other assets of an equivalent value."

26 43. The Pinetop Trust II moreover permits George Johnson and Jana Johnson to jointly  
27 remove any of the Trustees during their joint lifetimes and capacities.  
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2 44. The Trustees of the Pinetop Trust II are listed as George Johnson's children: Chris  
3 Johnson, Barbara Johnson and Margaret Johnson. Exh. B at Section III.

4 45. On or about September 24, 2018, counsel representing Ultra produced to the  
5 Commission a single-page document dated January 1, 2015, the same day the Pinetop Trust II was  
6 signed, entitled "Statement of Relinquishment." [Statement of Relinquishment, attached as Exhibit  
7 "C"]

8 46. The "Statement of Relinquishment" provides that George and Jana Johnson, as  
9 Settlers of the Trust, relinquish the administrative powers to reacquire the Trust Corpus they  
10 designated to themselves in the Pinetop Trust II.

11 47. The Statement of Relinquishment does not disclaim George Johnson's right to remove  
12 any of the Trustees of the Pinetop Trust II.

13 48. The Statement of Relinquishment moreover lists George Johnson and Jana Johnson as  
14 the Trustees of the Trust, rather than Chris, Barbara and Margaret Johnson.

15 49. The Statement of Relinquishment does not avow to be attached to and form a part of  
16 the Pinetop Trust II, nor was it produced together with a copy of the Pinetop Trust II. *See* Exh. B, at  
17 "Schedule A."

18 50. No explanation has been offered as to why George Johnson signed a copy of the  
19 Pinetop Trust II that incorporates Ultra as the sole asset of the Pinetop Trust II with the right to  
20 replace or borrow against that asset, and allegedly signed a statement relinquishing his right to  
21 replace or borrow against that asset the same day.

22 51. Regardless, nothing has been produced that demonstrates George Johnson  
23 relinquished the right to remove any of the Trustees of the Pinetop Trust II. Ultra remains the sole  
24 asset of the corpus of the Pinetop Trust II, and George Johnson remains the Settlor of the Pinetop  
25 Trust II.

26 d. **Demand Made on Ultra for Access to Books and Records**  
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2 52. On September 19, 2018, EPCOR, as interim manager for Johnson Utilities, filed a  
3 report in the Johnson Utilities pending rate case (Docket No. WS-02987A-17-0392) that reported that  
4 EPCOR's requests for documentation from Ultra have thus far been unsuccessful.

5 53. EPCOR reported that "Counsel for Ultra . . . has warned EPCOR that any payment  
6 withheld by Johnson Utilities to Ultra will be considered wrongful termination of the Restated  
7 Agreement between Ultra and Johnson, and . . . Ultra [will] pursue all legal remedies."

8 54. In light of the dispositive revelation from the Pinetop Trust II that Ultra and Johnson  
9 Utilities are indeed owned and controlled by the same individual, George Johnson, on September 20,  
10 2018, counsel for Staff made demand upon counsel for Ultra to provide immediate access to Ultra's  
11 books and records pursuant to the Affiliate Interest Rules.

12 55. Ultra has failed to provide the Commission with access to its books and records, and  
13 continues to deny that it is an affiliate of Johnson Utilities.

14 56. Since Johnson's failure to produce documentation occurred, EPCOR, as Interim  
15 Manager, has stopped Johnson Utilities from making any payments to Ultra, except for nominal  
16 amounts which are designated exclusively for the payroll for Hunt employees.

17 57. Prior to EPCOR's cancellation of Johnson's payments to Ultra, Johnson Utilities had  
18 been making payments of approximately \$1.3 million per month to Ultra.

19 **IV. CLAIMS**

20 **COUNT ONE**

21 **(Declaratory Relief – Ultra is an Affiliate of Johnson Utilities)**

22 58. Staff incorporates the foregoing allegations as if they were fully set forth herein.

23 59. A.A.C. R14-2-801(A) defines an "affiliate" as any other entity under direct or indirect  
24 common control with the public utility, with control being defined as "the power to direct the  
25 management policies of such entity, whether through ownership of voting securities, or by contract,  
26 or otherwise."

27 60. The Pinetop Trust II is the sole member of Ultra, and the Trust Corpus is a singular  
28 thing: 100% ownership interest in Ultra.



1  
2 61. George Johnson is the Settlor (Trustor) of the Pinetop Trust II.

3 62. The Pinetop Trust II's Trustees are George Johnson's children, Chris, Barbara and  
4 Margaret Johnson.

5 63. The Settlor of the Pinetop Trust II pledges the Trust Corpus for the benefit of the  
6 Trustees.

7 64. Sections III and V of the Pinetop Trust II respectively provide that George Johnson  
8 has the power to remove the Trustees from the Trust and to remove Ultra from Trust.

9 65. Ultra is owned and controlled by George Johnson. Johnson Utilities is also owned and  
10 controlled by George Johnson.

11 66. Ultra and Johnson Utilities are under common ownership and control and are  
12 "Affiliates" as defined by A.A.C. R14-2-801(A).

13 **COUNT TWO**

14 **(Declaratory Relief – Hunt is an Affiliate of Johnson Utilities)**

15 67. Staff incorporates the foregoing allegations as if they were fully set forth herein.

16 68. As stated above, A.A.C. R14-2-801(A) defines an "affiliate" as any other entity under  
17 direct or indirect common control with the public utility, with control being defined as "the power to  
18 direct the management policies of such entity, whether through ownership of voting securities, or by  
19 contract, or otherwise."

20 69. As stated above, Ultra and Johnson Utilities are ultimately owned and controlled by  
21 George Johnson.

22 70. Hunt is owned and controlled by George Johnson's children, Chris and Barbara  
23 Johnson.

24 71. During the OSC Hearing, Chris Johnson testified that the contract between Ultra and  
25 Hunt was negotiated between Chris and Barbara Johnson acting on behalf of Ultra, and Chris and  
26 Barbara Johnson acting on behalf of Hunt, to provide services to Johnson Utilities.

27 72. Under any reasonable interpretation of A.A.C. R14-2-801(A), Hunt and Ultra are  
28 under common control with Johnson Utilities.

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2                                   **COUNT THREE**

3                                   **(Violation of A.A.C. R14-2-804(A))**

4           73.     Staff incorporates the foregoing allegations as if they were fully set forth herein.

5           74.     Under A.A.C. R14-2-804(A), Johnson was required to provide the Commission with  
6 access to the books and records of its affiliates, Ultra and Hunt, *prior to* transacting business with  
7 such affiliates.

8           75.     Johnson Utilities did not provide the Commission with such access prior to transacting  
9 business with Ultra or Hunt.

10          76.     Johnson's omissions with respect to the existence of Ultra and Johnson Utilities'  
11 dealings with Ultra and Hunt prevented the Commission from exercising its authority pursuant to  
12 A.A.C. R14-2-804(C) and A.A.C. R14-2-805.

13                                   **COUNT FOUR**

14                                   **(Violation of A.A.C. R14-2-804(B))**

15          77.     Staff incorporates the foregoing allegations as if they were fully set forth herein.

16          78.     Under A.A.C. R14-2-804(B), Johnson was required to obtain prior approval from the  
17 Commission before obtaining a financial interest in an unregulated affiliate.

18          79.     Johnson did not obtain Commission approval prior to entering into financial  
19 relationships with Ultra and, indirectly, with Hunt.

20          80.     Johnson's omissions with respect to the existence of Ultra and Johnson Utilities'  
21 dealings with Ultra and Hunt prevented the Commission from exercising its authority pursuant to  
22 A.A.C. R14-2-804(C) and A.A.C. R14-2-805.

23                                   **COUNT FIVE**

24                                   **(Violation of A.A.C. R14-2-804(E))**

25          81.     Staff incorporates the foregoing allegations as if they were fully set forth herein.

26          82.     Under A.A.C. R14-2-804(E), Johnson is required to maintain a system of accounts  
27 that includes the necessary accounting records needed to record and compile transactions with each  
28 affiliate.

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2 83. EPCOR's efforts as interim manager have revealed that Johnson has failed to maintain  
3 accounting records that accurately record and compile its transactions with Ultra and Hunt.

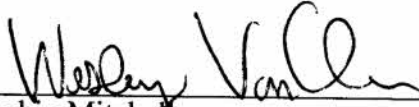
4 **V. RELIEF REQUESTED**

5 Staff hereby requests the following relief, in addition to any such relief as the Court may  
6 deem just and proper:

- 7 a. Staff requests an Order from the Commission that, by virtue of common ownership  
8 and control, Ultra and Hunt are affiliates of Johnson Utilities;  
9 b. Staff requests a Commission Order finding that Johnson has violated A.A.C. R-14-2-  
10 804(A), (B), and (E);  
11 c. Staff requests an Order from the Commission that Johnson's contract with Ultra is  
12 void pursuant to A.A.C. R-14-2-804(D);

13 Staff further requests an Order from the Commission that Ultra, or, alternatively, the George  
14 H. Johnson Revocable Trust, reimburse Johnson Utilities for all unauthorized payments made by  
15 Johnson Utilities to Ultra since the inception of the illegal agreement between Johnson Utilities and  
16 Ultra.

17 RESPECTFULLY SUBMITTED this 2nd day of November, 2018.

18   
19 Robin Mitchell  
20 Wes Van Cleve  
21 Naomi Davis  
22 Legal Division  
23 Arizona Corporation Commission  
24 1200 West Washington Street  
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27 Original and 13 Copies Docketed  
28 today November 2, 2018 and copies  
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